



INDUSTRY CIRCULAR

DEPARTMENT OF
THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Washington, D.C. 20226

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FREE GOODS, DISCOUNTS, REBATES, REFUNDS AND PRICE REDUCTIONS

Proprietors of Distilled Spirits Plants, Bonded Wine Cellars,
Taxpaid Wine Bottling Houses; Brewers, Importers, Whole-
sale Malt Liquor Dealers, Wholesale Liquor Dealers and
Others Concerned:

Purpose. This circular is to advise industry members that an ATF Ruling will be published in an early issue of the ATF Bulletin which will further amplify the provisions of Revenue Ruling 54-161, C.B. 1954-1, 338 (Internal Revenue). (See also ATF Ruling 74-6, ATF C.B. 1974, 50.) The new ruling will read as follows:

The response from industry following the publication of ATF Ruling 74-6, ATF C.B. 1974, 50, which related to practices employed by some industry members who furnished retailers with inordinate amounts of free goods and/or substantial price reductions, volume discounts, rebates, and refunds, indicates that the ruling has been interpreted as a shift in the Bureau's position concerning pricing. Actually, the intent of the ruling was to merely re-emphasize and amplify our position established in Revenue Ruling 54-161, C.B. 1954-1, 338 (Internal Revenue).

In general, 27 U.S.C. 205(b)(3) states that it is unlawful for any producer, bottler, importer, or wholesaler of alcoholic beverages, directly or indirectly, or through an affiliate, to induce any retailer to purchase alcoholic beverages from him to the exclusion, in whole or in part, of similar products sold or offered for sale by other persons in interstate commerce by furnishing, giving, renting, lending or selling to the retailer any fixtures, signs, supplies, money, services, or other things of value.

It was held in Revenue Ruling 54-161 that so-called free goods, discounts, rebates, refunds, and price reductions given to retailers pursuant to an agreement made at the time of sale are merely methods used to arrive at an agreed sales price and as such do not come within the purview of the Federal Alcohol Administration Act. However, if the free goods, discounts, rebates, etc., are such that the pricing aspect is merely a subterfuge, the transaction would constitute a "gift" within the meaning of 27 U.S.C. 205(b)(3).

In amplification of Revenue Ruling 54-161, the Bureau recognizes the fact that discounts may be granted to introduce new products, close out discontinued lines, and pass on to retailers savings to the supplier as a result of volume purchases, etc., and as such are methods used to arrive at an agreed sales price. However, if the discount is such that it is in reality a subterfuge for granting financial assistance to a retailer or for any other proscribed purpose, the discount would constitute a "gift" within the meaning of 27 U.S.C. 205(b)(3).

It is not the intent of the Bureau to interfere with industry members' prerogative to use discounts, rebates, etc., as legitimate pricing arrangements. However, the Bureau will consider questionable, and subject to investigation, the operations of any wholesaler or other supplier where it is found or where there is reason to believe the giving of a discount or price reduction results in a price to the retailer of less than the supplier's "laid-in" cost plus "total operating" cost. The foregoing will be applicable to all type discounts and price reductions (volume discounts, dollar volume purchases, combination "deals," etc.) and to all brand categories (confined brands, private label brands, etc.). Price determinations will be made primarily on an item by item basis for each item on an invoice.

For the purposes of this ruling "laid-in" cost will be that cost incurred by a wholesaler or supplier to place the goods in inventory and would consist of such costs as manufacturer's invoice price, freight, and state and local taxes; "total operating" cost will include selling, shipping and delivery, occupancy, warehouse operation, administrative and general expenses normally incurred in the conduct of business.

The Bureau does not take the position that a sale below laid-in cost plus total operating cost is automatically a violation of law, but merely that such a sale is questionable and may be investigated. However, if the sale does not meet the above criteria, and the purpose for which a discount is given cannot otherwise be specifically justified, the Bureau will consider such transaction a proscribed inducement; if the elements of exclusion and interstate or foreign commerce are also present, a violation of the Federal Alcohol Administration Act would be incurred.

The Bureau's major objective in issuing this ruling is to furnish industry with the most effective yet practical criteria possible in distinguishing between legitimate price reductions and proscribed inducements. The criteria set forth above is intended solely to provide industry with a workable guideline with which to make this distinction.

Rev. Rul. 54-161, C.B. 1954-1, 338 (Internal Revenue), amplified by ATF Rul. 74-6, ATF C.B. 1974, 50, is hereby further amplified.

Inquiries. Inquiries concerning this circular should refer to its number and be addressed to the Assistant Director, Regulatory Enforcement, Bureau of Alcohol, Tobacco and Firearms, 1200 Pennsylvania Avenue, N.W., Washington, D. C. 20226.



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